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ABSTRACT

In 1989, federal appellate courts ruled on issues regarding a state's role in financing a court-ordered desegregation plan, and the use of federal funds for vocational rehabilitation and Title I programs. State supreme courts decided on the constitutionality of four states' school financing schemes and, in a fifth state, on distribution of federal impact aid funds. School tax cases concerned the use of revenues for unused vacation pay and salaries of assistant tax assessors. Cases discussed in this chapter fall under three major topics: (1) public funds for private schools; (2) sources and allocations of public school funds; and (3) school tax issues, including tuition, tax assessment and collection, tax exemptions and deductions, tax revenue disbursement, bond issuance, and delinquent school taxes. (MLF)

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FINANCE

Patricia G. Anthony and

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INTRODUCTION

There were three federal appellate decisions and one U.S. district court decision in the area of school finance. The appellate decisions ruled on issues regarding a state's role in financing a court-ordered desegregation plan, and the use of federal funds for vocational rehabilitation and title I programs. The district court decision concerned a school district's use of facilities owned by a Roman Catholic church to house elementary school classes.

The constitutionality of four states' school financing schemes was decided in those states' supreme courts. Additionally, another state supreme court ruled on the distribution of federal impact aid funds. State courts also litigated cases concerned with the constitutionality of loaning textbooks to nonpublic schools (specifically paro-

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chial schools), equal protection issues centering around the distribution of certain kinds of state funds, and the constitutionality of excess levies provisions.

School tax cases concerned the use of revenues for unused vacation pay and salaries of assistant tax assessors. There were challenges to bond issues, tax exemptions, tax deductions, and several tax delinquency cases. Other litigation dealt with the taxation of teacher contributions to retirement systems and the applicability of social security taxes to wages for school-related extra duties.

PUBLIC FUNDS FOR PRIVATE SCHOOLS

The United States District Court of Massachusetts granted injunctive relief to two elementary school students attending public school classes in a building owned and operated by the Roman Catholic Church.[1] In requiring the school district to reassign these students to another elementary school, the court agreed with the plaintiffs that probable establishment clause violations existed in the form of provisions of the lease, large crosses over the entrance to the school and the playground, flyers posted around the building announcing upcoming religious events, and the parish priest's habit of greeting the school children each morning. The court felt that such conditions relayed to students the message that "the public school and the Roman Catholic Church are closely linked; the Roman Catholic Church has a special status in our society; . . . members of other faiths are outsiders or guests; and the government favors and encourages religious belief rather than disbelief."[2]

Aside from impermissibly advancing the Roman Catholic faith over other religions, the court found that the lease fostered excessive entanglement between church and state, in that it stated that "[t]enant's use of the Premises shall at all times be consistent with the teachings of the Roman Catholic Church enunciated by the Holy Father and Bishops in communion with him."[3] Enumerating specific instances in which school board members had already deferred to church officials on school-related matters,[4] the court contended "that the lease and Bridgewater's conduct pursuant to it constitutes an impermissible delegation to, or sharing with, the Roman Catho-

1. Spacco v. Bridgewater School Dep't, 722 F. Supp. 834 (D. Mass. 1989).
2. *Id.* at 842-3.
3. *Id.* at 836.
4. *Id.*

lic Church of the Town's responsibility to determine what is taught to its elementary school students."[5] The court granted injunctive relief, mandating that the school district must reassign the two students prior to the beginning of the 1989-90 school year, and set a date for future proceedings to determine the validity of alleged establishment clause violations.

The Supreme Court of Nebraska upheld a lower court's decision that the lending of textbooks to private school students did not violate either the state constitution or the establishment clause of the first amendment.[6] At issue was the constitutionality of a statute delegating responsibility to school districts for loaning, upon individual request, textbooks to students attending nonpublic schools. Appellants claimed that the statute violated the establishment clause and Nebraska's state constitution which states that "[a]ppropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof . . . ."[7]

In finding that the statute met state constitutional constraints, the court reasoned that the books were being loaned to students, not to schools; therefore, there existed no appropriation of public funds to nonpublic schools. In regard to establishment clause violations, the court cited the controlling cases, *Meek v. Pittenger*,[8] and *Wolman v. Walter*,[9] in which the three-pronged test established in *Lemon v. Kurtzman*[10] was applied to similar textbook practices and upheld. Consequently the court ruled that the Nebraska statute did not violate the state constitution or the establishment clause.

SOURCES AND ALLOCATIONS OF PUBLIC SCHOOL FUNDS

State School Finance Programs

Four state supreme courts—Montana, Wisconsin, Texas, and Kentucky—issued opinions regarding the constitutionality of each state's public education financing system. West Virginia Supreme

5. *Id.* at 847.
6. Cunningham v. Lutjeharms, 437 N.W.2d 806 (Neb. 1989).
7. *Id.* at 809.
8. 421 U.S. 349 (1975).
9. 433 U.S. 229 (1977).
10. 403 U.S. 602 (1971).

Court of Appeals issued an opinion concerning state constitutional excess levies provisions. Three decisions by New York appellate courts considered issues related to state supplemental aid, eligibility requirements for excellence in teaching set-aside grants, and the implementation of a statute reducing school district state educational aid. The Third District Appellate Court of Illinois ruled on school district actions seeking recomputation of state aid funds. Finally, the Eighth Circuit Court of Appeals determined the state of Missouri's obligation to fund interdistrict transfers for desegregation purposes.

The Supreme Court of Montana affirmed, but modified, a lower court ruling that the state's method of financing public education violated state constitutional provisions guaranteeing equal education opportunity.[11] Due to "unrebutted testimony that Foundation Program funding falls short of even meeting the costs of complying with Montana's minimum accreditation standards . . . forcing an excessive reliance on permissive and voted levies,"[12] the court concluded that the state failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed by the state constitution.[13]

The court cited evidence that per-pupil funding disparities between similar sized school districts ranged as high as eight to one, and that such disparities resulted in unequal educational opportunity in the form of narrower curriculum choices; ill-equipped laboratories; paucity of textbooks, instructional materials, and audiovisual equipment; and poor maintenance of facilities. The court agreed with the district court that equality of educational opportunity should not be measured by output; that "state fiscal difficulties in no way justify perpetuating inequities";[14] and that "spending disparities among Montana's school districts cannot be described as the result of local control."[15] Ruling that the existing method for dispensing state educational funds violated the equal educational opportunity clause of the state constitution, the court declined to rule on the related issue of education being a fundamental right.

In regard to three other issues, the court upheld the lower court's rulings that: (1) state accreditation standards were minimum standards, and "do not fully define either the constitutional rights of

11. Helena Elementary School Dist. No. 1 v. State, 769 P.2d 684 (Mont. 1989).
12. *Id.* at 690.
13. *Id.*
14. *Id.*
15. *Id.*

students or the constitutional responsibilities of the [s]tate of Montana for funding its public elementary and secondary schools";[16] (2) 874 funds (federal monies provided to districts serving children of federal employees) could not be included in the state funding formula until the United States Secretary of Education approved the state's equalization plan; and (3) school districts could not be awarded attorneys' fees under a "common fund" doctrine.[17]

In Wisconsin, the state supreme court ruled that the current funding formula used to distribute state education monies was not inconsistent with a state constitutional provision that "the legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable";[18] and, therefore, was constitutional. The court reached this conclusion by examining the content of the constitutional convention debates during which the Wisconsin Constitution was framed. In doing so, the court concluded that "the requirement as to uniformity applies to the districts after they are formed, — to the character of the instruction given, — rather than to the means by which they are established and their boundaries fixed."[19]

The court then examined the funding formula for equal protection violations and determined that access to a free public education is a fundamental right under the Wisconsin Constitution. However, the court ascertained that no child was being denied access to an education; and, since local control over education—another Constitutional mandate—was partly responsible for the funding disparities, the court ruled that there existed no equal protection violations within the current financing scheme. Finally, in acknowledging the legitimacy of the plaintiff's claims of inadequate funds necessary for financing "specialized programs" to "meet the particularized needs of students related to the effects of poverty,"[20] the court decided that these demands may not be correctly described as claims for uniformity or equal treatment under the Wisconsin Constitution, but must rather be made to the legislature or to the community.[21]

The Texas Supreme Court reversed an appellate court ruling and affirmed, but modified, a trial court decision that the Texas school financing scheme was unconstitutional.[22] Disagreeing with

16. *Id.* at 691.
17. *Id.*
18. Kukor v. Grover, 436 N.W.2d 568, 574 (Wis. 1989).
19. *Id.* at 575.
20. *Id.* at 585.
21. *Id.*
22. Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989).

the appellate court's decision that the term "efficient" was a "political" issue rather than a constitutional matter, the court determined that there existed an "express constitutional mandate" for the legislature to provide for an "efficient system of public free schools."[23] Citing "gross inequalities" existing within the current educational system, the court reasoned that the drafters of the state constitution would not consider the current financing scheme to be "efficient."[24]

Futhermore, in analyzing historical documents, the court reached the opinion that the constitutional phrase "a general diffusion of knowledge" prohibited the existence of an educational system which "provides not for a diffusion that is general, but for one that is limited and unbalanced."[25] This was evidenced by the wide disparities in property wealth among school districts, which, when coupled with the Texas educational financing scheme, resulted in great disparities in per-pupil expenditures across the state (i.e., $2,112 to $19,333), which, in turn, affected the quality of educational programs. Consequently, the court held "that the state's school financing system is neither financially efficient nor efficient in the sense of providing for a 'general diffusion of knowledge' statewide, and therefore . . . violates . . . the Texas Constitution. . . . There must be a direct and close correlation between a district's tax effort and the educational resources available to it; . . . districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort."[26]

In June 1989, the Supreme Court of Kentucky declared the state's system of common schools unconstitutional; the legislature had failed to comply with the constitutional mandate to "provide an efficient system of common schools throughout the state."[27] Similar to the Texas case, the Kentucky court had to determine the meaning of "efficient," and, to do so, also utilized historical records of constitutional debates to define the term.

Quoting the framers of the state constitution, the court found that a system of common schools was one "of practical equality in which the children of the rich and poor meet upon a perfect level and the only superiority is that of the mind."[28] It is a system where "there are no distinctions in the common schools, all stand upon one

23. *Id.* at 393.
24. *Id.* at 395.
25. *Id.* at 396.
26. *Id.*
27. Rose v. Council for Better Educ., 88-SC-804-TG slip op. 1 (Ky. June 8, 1989).
28. *Id.* at 44.

level."[29] Finally, reiterating the words of one of the framers, and urging that they stand as "a guidepost for all Kentuckians today and in the future," the court recalled that "[i]f they are in the future to be the dependence of the people of Kentucky for the instruction of their youth, what is the logic of the situation? . . . *to seize every opportunity to make them more efficient*, to treat them with no niggard or stinted hand. . . ."[30]

When the court examined the current status of Kentucky's system of common schools, it found, "overall inadequacy of our system of education, when compared to national standards and to the standards of our adjacent states . . . great disparity . . . in educational opportunities throughout the state . . . [and] great disparity and inadequacy, of financial effort throughout the state."[31] Consequently, when juxtaposed with the constitutional mandates, the court found that the Kentucky system of common schools fell "short of the mark of the constitutional mandate of 'efficient.' "[32]

Eligibility requirements were in dispute in two New York cases. A New York appellate court ruled against a school district challenging a regulation governing eligibility for small school district supplemental aid.[33] The court rendered the case moot due to the passage of subsequent legislation, the qualifying requirements of which the district failed to meet.

In the second New York case, an appellate court held that eligibility requirements for teacher excellence awards violated equal protection in that "similarly situated educators" (i.e., department chairpersons) were ineligible for the funds because they were paid according to an administrator's salary scale rather than a teacher's.[34] The court ruled, however, that its ruling was not retroactive in effect.

In a final New York case, a school district challenged the implementation of a statute which reduced the district's state educational funding.[35] The court ruled that the state was not arbitrary or capricious in implementing the law which mandated that "identified" school districts make corrections regarding taxpayer membership in their school district. Such corrections increased the plaintiff school

29. *Id.* at 45.
30. *Id.* at 44.
31. *Id.* at 60.
32. *Id.*
33. Cerniglia v. Ambach, 536 N.Y.S.2d 227 (App. Div. 1988).
34. Schneider v. Sobol, 546 N.Y.S.2d 221 (App. Div. 1988).
35. Brentwood Union Free School Dist. v. State, 546 N.Y.S.2d 116 (App. Div. 1989).

district's gross income, which, in turn, decreased its amount of state aid.

An Illinois appellate court reversed a lower court decision in which school districts brought action seeking recomputation of state educational funds.[36] State allocations had been based upon erroneously inflated property valuations which were lowered after taxpayers appealed to the Tax Appeal Board. With the reduction of the tax base, school district funds were decreased. At conflict was interpretation of a statute governing recomputation of state aid funds. Defendants interpreted the statute as meaning that only errors of a computational nature (i.e., attendance figures or arithmetic errors) were covered by the statute. Plaintiffs maintained that figures based upon incorrect information (i.e., inflated property values) were errors too, and as such were also covered. The court, agreeing with the school districts, reversed the trial court's decision and remanded the case for recomputation of state aid.

The Supreme Court of West Virginia issued a writ prohibiting a lower court's order mandating that excess levies of wealthy school districts be redistributed to property poor districts.[37] The circuit court's "recapture" order was premised upon alleged equal protection violations and was activated with the failure of the passage of a statewide excess levy amendment.

Citing art. X, sec. 10 of the West Virginia Constitution, plaintiffs maintained that excess levies passed by voters of a county were permitted and encouraged by the constitution and should not be subject to equal protection principles. The court agreed for several reasons. First, in analyzing the two sections of the constitution, the court found that the more specific provision concerning excess levies superseded the more general and liberally construed provisions governing equal protection. Second, another constitutional principle mandated that more recent constitutional provisions should take precedence over older ones. In this case, the court observed that the provision on excess levies, passed in 1958, was far more recent than the equal protection provisions which dated back to 1872. Finally, the court sought to determine whether prohibition of the original order was the proper remedy. Observing that the lower court "exceeded its legitimate powers by the entry of an unconstitutional order,"[38] which penalized counties exercising their constitutional right

36. Board of Educ. of Lockport Township High School Dist. 205 v. Gill, 533 N.E.2d 380 (Ill. App. Ct. 1988).

37. State *ex rel.* Bds. of Educ. v. Chafin, 376 S.E.2d 113 (W. Va. 1988).

38. *Id.* at 120.

concerning excess levies, the court held that a writ of prohibition should be issued.

An Eighth Circuit Court of Appeals reversed in part and affirmed in part a lower court decision delineating the state of Missouri's role in funding interdistrict transfers for desegregation purposes.[39] While acknowledging that Missouri must "participate in funding desegregation in the St. Louis schools,"[40] the appellate court took issue with the extent of that role as defined by the district court. Citing an earlier decision which had set the parameters for the state's participation, the appellate court reversed the lower court's ruling that "Missouri was obligated to fund whatever interdistrict transfers were necessary for the districts to achieve their Plan Goal (25% black, 75% white) enrollment levels."[41] Instead, the appellate court maintained that "a 15,000 student limit on Missouri's financial liability for interdistrict transfers was our original intent in outlining Missouri's obligations."[42]

Local Funds for Education

During this reporting period, two cases concerned the use of local funds for school facilities. In Tennessee, a school was condemned for fire code violations whereupon the Campbell County Board of Education adopted a resolution asking the Board of Commissioners to fund a new school. The site selected for the school did not comply with Tennessee regulations for school sites, and the State Commissioner of Education asserted that the school program and local financial circumstances were inadequate. The Board of Commissioners refused to fund the school.

In a prolonged series of actions including a second refusal by the Board of Commissioners to fund the school, a survey by the state, and ensuring elections of county commissioners, the Commissioners adopted a resolution approving funding at the proposed site.

An intervening election resulted in the replacement of the majority of the Board of Commissioners, and the new Board did not appropriate funds for the proposed school. A writ of mandamus was filed, and, one month later, a bond resolution failed. The Board of Commissioners filed for dismissal or summary judgment and the School Board opposed it.

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39. Liddell v. Board of Educ. of St. Louis, Mo., 873 F.2d 191 (8th Cir. 1989).
40. *Id.* at 193.
41. *Id.*
42. *Id.*

The court held that the Commissioners had an enforceable, legal duty to fund the proposed project, whereupon an appeal was filed. The Supreme Court of Tennessee reversed the decision, asserting that the duty of the Commissioners was discretionary rather than ministerial, a bond issue did not bind the Commissioners, and the proposed site did not conform to state rules and regulations.[43]

Modesto High School District in California assessed a construction company developer fees to support the construction of school facilities. The company sought a writ of mandamus to set aside prior impositions of school facility fees, refund those collected, and cease further assessments. The writ was entered, and on appeal the district argued that the mandate was not appropriate since the developers could enter suit for refund. The writ was reversed based on the court's interpretation of legislative intent.[44]

A Tennessee appellate court ruled in another case concerning local funds for education, that a county was required to prorate interest funds earned from the sale of a city hospital, and give the school district its portion in accordance with a statute overseeing the apportionment of school funds.[45] The court affirmed a lower court decision which had determined that such interest must be prorated; however, the awarding of prejudgment interest was not necessary.

Federal Funds for Education

There were two federal appellate decisions and one state appellate decision concerning the use of federal education funds. The South Carolina Supreme Court ruled that counties must disburse federal funds made available by the state to school districts in which national forests were located.[46] Additionally, any accrued interest on the withheld funds must also be paid by the counties.

The United States Court of Appeals, Sixth Circuit, affirmed a decision by the United States Department of Education (USDOE) that the state of Michigan had misexpended federal funds provided for the state's vocational rehabilitation program.[47] By use of a random survey of cases, the Acting Rehabilitative Commissioner (ARC)

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43. State *ex rel.* Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).
44. Sutco Constr. v. Modesto High School Dist., 256 Cal. Rptr. 671 (Ct. App. 1989).
45. Dyersburg Bd. of Educ. v. Dyer County Comm'n, 776 S.W.2d 129 (Tenn. Ct. App. 1989).
46. Charleston County School Dist. v. Charleston County, 376 S.E.2d 778 (S.C. 1989).
47. Michigan Dep't of Educ. v. United States Dep't of Educ., 875 F.2d 1196 (6th Cir. 1989).

of the USDOE's Rehabilitative Services Administration (RSA) determined that, in thirteen of the 259 cases, disallowable expenditures had been made.

The state of Michigan appealed the ruling on the grounds that the ARC did not have the proper authority to perform the audit. The court ruled in favor of the USDOE, upholding the delegation of authority by the Secretary of Education to the ARC. In interpreting several federal statutes delineating the delegation of duties by the Secretary,[48] the court determined that no unlawful delegation had occurred and, therefore, the results of the audit stood.

On a related matter, regarding possible imposition of interest, the court agreed with the Education Appeals Board that, because the USDOE "retracted its efforts to collect the interest, . . . the issue was not ripe for decision by [the] court."[49]

A Ninth Circuit Court of Appeals reversed a decision of the United States Secretary of Education which would have required the state of California to return to the United States Department of Education approximately $700,000 in federal title I funds.[50] At issue was the timeliness of the obligation of the funds. The Secretary maintained that because the $700,000 was not specifically obligated during the time frame mandated by federal statute 20 U.S.C. section 1234a(d), the state must refund that amount. The state argued that the $700,000 had been obligated because it was carried over from one state fiscal year to the next, as allowed by federal statute, and then spent during that subsequent year. The state explained that the FIFO (first-in-first-out) accounting procedures used by California documented the obligation of the funds. The court agreed, stating that since more funds were expended during fiscal year 1981-82 than had been carried over from fiscal year 1980-81, the secretary's decision had no merit. The specific amount in question, $700,000, had been obligated according to the time frame of the federal statute.

School Fees

Washington Local School District in Ohio announced a $5 fee per pupil, per six-week grading period for paper products, copier materials, student record-keeping/test supply sheets, work sheets, and other consumable supplies. Parents challenged the legal authority

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48. 20 U.S.C. § 3472 (1979); 29 U.S.C. § 702(a) (1973); and 29 U.S.C. § 706(c) (1973).

49. Michigan Dep't of Educ. v. United States Dep't of Educ., 875 F.2d 1196, 1206 (6th Cir. 1989).

50. Department of Educ. of Cal. v. Bennett, 872 F.2d 303 (9th Cir. 1989).

to impose fees or withhold grades and credits for failure to pay for supply items. The Supreme Court of Ohio held that the superintendent did not have authority to assess fees for the cost of administrative materials.[51]

SCHOOL TAX ISSUES

Issues pertaining to school taxes ranged from nonresident tuition charges to challenges of tax policies and procedures. The use of school tax referenda and several bond issues also were litigated during this period.

Tuition

A Nebraska taxpayer sought a declaratory judgment that a revenue statute pertaining to the nonresident high school tuition rates was unconstitutional. The taxpayer argued that it was an invalid delegation of legislative authority, an improper tax measure, and did not comply with other parts of the legislative bill.

A year later, the legislature repealed and replaced part of the bill, at which time the school district asserted that the taxpayer's question was moot. Summary judgment was granted the district, and the taxpayer appealed.

The Supreme Court of Nebraska reversed the decision and remanded the case with instructions to dismiss the taxpayer's petition. The court held that the taxpayer had not established the existence of a justiciable controversy, and thus did not have a *prima facie* case entitling him to declaratory relief.[52]

A Maryland appellate court considered the constitutional right of parents residing in one county to have their children attend the public schools of another county without paying tuition.[53] In vacating the lower court's decision which had ruled in favor of the school district's collection of tuition from the parents, the court remanded the case in order that the parents could initiate a review by the Maryland Board of Education as to the merit of their claim that, under the state constitution, their children were entitled to a free public education in any school district of the state.

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51. Association for the Defense of the Wash. Local School Dist. v. Kiger, 537 N.E.2d 1292 (Ohio 1989).
52. Mullendore v. Nuernberger, 434 N.W.2d 511 (Neb. 1989).
53. Clinton v. Board of Educ., 556 A.2d 273 (Md. 1989).

Tax Assessment and Collection

Tax assessment and collection cases were litigated in six states during 1989. The California Building Industry Association challenged a special tax resolution for school facilities adopted by voters in a Los Angeles school district under a constitutional provision. The district imposed the special tax only on new units of residential development. The Association argued that extractions imposed on developers of new residential housing were development fees rather than special taxes.

On appeal, the court asserted that when a provision of the constitution is ambiguous, the separate provision pertaining to the issue must be harmonized; that implied partial appeal must be avoided; and that the intent of the electorate must be examined.[54] Because taxes are compulsory and development fees are imposed only if a developer elects to develop, the voter approved resolution was invalidated.

The California State Board of Equalization imposed a use tax on books sold to students through teachers by Scholastic Book Clubs. The corporation appealed, arguing that teachers were not acting under the corporation's authority since they were not obliged to take orders, sell, or deliver books. The court upheld the summary judgment for the Board.[55]

The Kentucky Supreme Court ruled on two cases. Logan Aluminum Company challenged the tax computations of the Russellville Independent Schools.[56] The court held that local public school districts are not state agencies and that challenges to the method of tax computation are properly litigated in local circuit courts, not the Kentucky Board of Tax Appeals. In a second case, the Kentucky Supreme Court ruled that agricultural and horticultural land owners were entitled to litigate the constitutionality of tax assessment methods when the value is not based on the purpose for which the land was used.[57]

In Texas, Lingleville Independent School District sought to collect delinquent real estate taxes on a natural gas pipeline belonging to Valero Transmission Company.[58] The pipeline was buried below

54. California Bldg. Indus. Ass'n v. Governing Bd., 253 Cal. Rptr. 497 (Ct. App. 1988).

55. Scholastic Book Clubs, Inc. v. State Bd. of Equalization, 255 Cal. Rptr. 77 (Ct. App. 1989).

56. Board of Educ. v. Logan Aluminum, Inc., 764 S.W.2d 75 (Ky. 1989).

57. Griggs v. Dolan, 759 S.W.2d 593 (Ky. 1988).

58. Lingleville Indep. School Dist. v. Valero Transmission Co., 763 S.W.2d 616 (Tex. Ct. App. 1989).

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normal plow depth and the school district argued that it was real property. On appeal, the pipeline was classified as personal property. The court based this decision on the facts that the rights and possibility of removing the pipeline were retained, there was no evidence of intention that it would ever become a part of the land, and it was used as an accessory to business, not as an accessory to the land.

Another case in Texas concerned an election which would allow voters to consolidate tax assessment and collection functions in all taxing units located within an appraisal district.[59] The Weatherford Independent School District and City of Weatherford sought to invalidate the election on several grounds. When a district court entered judgment for the school district and city, the county and state appealed. The Court of Appeals of Texas reversed the decision and held that the election was valid, but not binding on Weatherford Independent School District, where a majority of voters did not approve the measure.

Also in Texas, a bank sued for refund of *ad valorem* taxes on bank stock.[60] The Deer Park Independent School District was granted summary judgment on the grounds that a United States Supreme Court decision overruling Texas precedent and invalidating *ad valorem* property tax on bank shares could not be applied retroactively.

Several cases were litigated in Pennsylvania. The Pleasant Valley School District adopted a resolution to levy, assess, and collect an occupation and *per capita* tax to be collected by the elected tax collector. The tax collector refused to collect the tax, arguing that the directive was not an elected duty. The Commonwealth Court of Pennsylvania held that it was a statutory duty.[61]

Taxpayers in the Penn Hills School District challenged the legality of a new mercantile tax. The boundaries of the municipality of Penn Hills are coterminous with those of the school district, and the municipality already had a mercantile tax. Taxpayers sought injunctive relief from district collection of the tax, whereupon the district requested the municipality to share equally in the revenue if the taxpayers were granted relief. The court held that the case did not involve two political subdivisions. Thus, both the municipality and

59. Parker County v. Weatherford Indep. School Dist., 775 S.W.2d 881 (Tex. Ct. App. 1989).

60. First Bank of Deer Park v. Deer Park Indep. School Dist., 770 S.W.2d 849 (Tex. Ct. App. 1989).

61. Borger v. Pleasant Valley School Dist., 551 A.2d 648 (Pa. Commw. Ct. 1988).

the school district could levy the same tax during the same year under the same taxing authority.[62]

The Weatherly School District obtained an order which held a rafting operator in a state park liable for the collection and remittance of an amusement tax. The order was reversed on the grounds that taxes cannot be imposed on activities in a facility of the Commonwealth.[63]

The Supreme Court of Connecticut held that wages paid to teachers for school-related extra duties and coaching assignments were subject to social security taxes. Town boards of education are not municipalities exempt from participation in the federal social security program.[64]

Palatine National Bank in Illinois sought relief from taxation based on a levy filed after the statutory due date. A refund was granted, and the county tax collector appealed. The court reversed the decision, observing that schools have the statutory authority to extend additional taxes for educational purposes at any time during a given fiscal year. Thus, the time period for certifying and returning a tax levy was not strictly applied.[65]

Use of School Tax Base Revenues

Two cases concerned the use of district revenues for payment of salaries. In West Virginia, the Logan County Board of Education resolved to provide a pay raise to all school personnel, pending the availability of anticipated new tax revenues. When the new revenues were not forthcoming, the State Board of School Finance ordered the board to adjust its budget downward. This effectively voided the proposed pay raises, whereupon the Logan County Education Association filed suit. The Supreme Court of West Virginia ruled that employees did not have a legitimate entitlement to the pay raise.[66]

A Florida appellate court ruled that an employee was entitled to terminal pay for accumulated sick leave upon retirement, after hav-

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62. Penn Hills School Dist. v. Municipality of Penn Hills, 555 A.2d 302 (Pa. Commw. Ct. 1989).

63. Whitewater Challengers, Inc. v. Weatherly School Dist., 563 A.2d 1305 (Pa. Commw. Ct. 1989).

64. Board of Educ. v. Connecticut State Employees Retirement Comm'n, 556 A.2d 572 (Conn. 1989).

65. *In re* County Collector of McHenry County, 536 N.E.2d 1288 (Ill. App. Ct. 1989).

66. Logan County Educ. Ass'n v. Logan County Bd. of Educ., 376 S.E.2d 340 (W. Va. 1988).

ing worked in the school district for six years.[67] The school district maintained that since the employee had failed to work a total of ten years in the district, she was ineligible for accumulated sick leave pay. The court, in ruling for the employee, pointed out that there was no minimum term of employment stated in the district's retirement policy, and that the employee had fulfilled the requirements of the Florida Division of Retirement; therefore, the employee was entitled to her accumulated sick leave pay.

A New Jersey Board of Education budget was rejected by voters, whereupon the municipality reduced the budget without a timely presentation of reasons for the reduction. The state board of education dismissed the municipality's answer to the budget reduction and restored the district budget.

On appeal, the state board's decision was reversed and further review sought. The Supreme Court of New Jersey affirmed the decision, holding that reasons must accompany a reduction in school board budgets following voter rejection and that the commissioner of education was obliged to consider the municipality's answer to budget reductions even if it is not submitted contemporaneously with the certification of budget reductions.[68] The court held that the later the municipality's answer, the stronger the presumption against the educational validity of the proposed budget cuts.

Also in New Jersey, a superior court held that the doctrine of necessity enabled members of a borough council who had conflicts of interest to participate in school budget decisions.[69] The necessity arose from the fact that their absence would preclude a council quorum.

Tax Exemptions

Cases pertaining to exemptions from sales, use, and *ad valorem* taxes were adjudicated during this reporting period. The Orleans Parish School Board sought exemption from a 1% additional sales tax on purchased or consumed items. An appellate court denied the exemption based on a legislative resolution which suspended all exemptions from the new 1% sales tax.[70]

67. Pitts v. Bay County School Bd., 540 So. 2d 157 (Fla. Dist. Ct. App. 1989).
68. Board of Educ. v. Mayor of Deptford, 561 A.2d 589 (N.J. 1989).
69. Allen v. Toms River Regional Bd. of Educ., 559 A.2d 883 (N.J. Super. Ct. Law Div. 1989).
70. Orleans Parish School Bd. v. McNamara, 532 So. 2d 512 (La. Ct. App. 1988).

In Wyoming, the Sublette County School District sought to recover sales and use taxes paid by school construction contractors.[71] The Supreme Court of Wyoming denied the district claim that it was tax-exempt with respect to their funds. The court stated that, even though district funds were used by the contractors to pay the taxes, the contractors were nonexempt entities.

Ad valorem tax cases concerned faculty residences on private school property.[72] The superintendent of the Friends School in Baltimore appealed an assessment of real property taxes on his residence located on school property. The assessment was withdrawn, whereupon the Supervisor of Assessments appealed. On appeal, the court stated that the tax court erred in applying the standard that the residence had to be the site of academic activities in order to qualify for the exemption. Furthermore, the court stated that the decision required the exercise of judgment which first had to be made by an administrative agency. The case was reversed and remanded with instructions.

A North Dakota school superintendent protested personal income tax on the rental value of a residence provided by the school district.[73] On appeal, the rental value of the residence was excluded from the superintendent's gross income. The court held that the provision of such a "perk" was consistent with legislative intent to recognize the problems of small school districts and low administrative salaries.

In Florida, faculty residences at a not-for-profit, co-educational, church-related school were held exempt from *ad valorem* taxes.[74] A district court of appeal based the ruling on accreditation requirements that faculty live on campus and an educational rationale.

The County Board of Assessors in Nassau, New York denied landowners a school tax exemption on a business investment which was under construction. On appeal, landowners were granted the exemption prospectively. The refund claim was dismissed on the basis that the enabling statute did not apply retroactively.[75]

In ten New York cases where taxpayers sought to reinstate real property tax exemptions and compel refunds, the courts held that schools could not adopt resolutions to opt out of a statutory scheme

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71. Sublette County School Dist. No. 1 v. State Bd. of Equalization, 770 P.2d 218 (Wyo. 1989).

72. Friends School v. Supervisor of Assessments, 550 A.2d 657 (Md. 1988).

73. Erdelt v. United States, 715 F. Supp. 278 (D.N.D. 1989).

74. Saint Andrew's School v. Walker, 540 So. 2d 207 (Fla. Dist. Ct. App. 1989).

75. Corporate Property Investors v. Uniondale Union Free School Dist. No. 2, 545 N.Y.S.2d 171 (App. Div. 1989).

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for tax exemptions;[76] the county had relieved school districts of liability for tax refunds;[77] and the four-month limitation to compel a public body to perform a statutorily enjoined duty begins to run when the public body refuses to perform the duty in question.[78]

Tax Deductions

Taxpayers in Mississippi donated leasehold interest in lands to a school district and reported charitable contributions on tax returns for two nonconsecutive years. Portions of the deductions were disallowed on the basis that the taxpayers had not established the actual value of their contributions. The taxpayers petitioned the tax court to redetermine the value of the leasehold interests and the court ruled instead on the validity of the leases. On appeal, the judgment was vacated and the case was remanded with instructions to focus on the valuation of the leaseholds.[79]

Tax Revenue Disbursement

Residents in four Illinois school districts sought to enjoin the County Treasurer from distributing portions of real estate taxes and to obtain a tax refund. They claimed that the new tax rate was improperly extended. A trial court denied relief on the basis that plaintiffs had an adequate remedy at law and that it was necessary to balance competing public interests. The decision was affirmed on appeal.[80]

Bond Issuance

Six cases pertaining to bond issuances were dismissed during this reporting period. In Pennsylvania, taxpayers challenged the is-

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76. Coliseum Towers Assoc. v. Livingston Ass'n, 545 N.Y.S.2d 174 (App. Div. 1989); Coliseum Hotel Assoc. v. Uniondale Union Free School Dist. No. 2, 545 N.Y.S.2d 177 (App. Div. 1989).

77. Bowery Sav. Bank v. Board of Assessors, 545 N.Y.S.2d 178 (App. Div. 1989); Jericho Quadrangle One v. Musiello, 545 N.Y.S.2d 181 (App. Div. 1989); Garden City Center Assoc. v. Board of Assessors, 545 N.Y.S.2d 184 (App. Div. 1989); Global Frozen Food v. County of Nassau, 545 N.Y.S.2d 187 (App. Div. 1989); Reckson Assoc. v. Uniondale Union Free School Dist. No. 2, 545 N.Y.S.2d 189 (App. Div. 1989).

78. Coliseum Towers, 545 N.Y.S.2d 173 (App. Div. 1989); Jericho Quadrangle, 545 N.Y.S.2d 181 (App. Div. 1989); Jericho Properties No. 1 v. Musiello, 545 N.Y.S.2d 183 (App. Div. 1989); Garden City Center Assoc. v. Board of Assessors, 545 N.Y.S.2d 184 (App. Div. 1989); Global Frozen Food v. County of Nassau, 545 N.Y.S.2d 187 (App. Div. 1989); Jericho-Westbury Indoor Tennis v. Board of Assessors, 545 N.Y.S.2d 193 (App. Div. 1989).

79. Stewart v. Commissioner of Internal Revenue, 841 F.2d 118 (5th Cir. 1988).

80. Alexander v. County of Tazwell, 537 N.E.2d 1149 (Ill. App. Ct. 1989).

suance of general obligation bonds on the grounds that proper advertising requirements had not been followed and the open meetings law was violated. The case was dismissed.[81]

Also in Pennsylvania, a challenge of a school district issuance of general obligation bonds was dismissed.[82] When a group of citizens appealed, the court held that the district had authority to take the steps necessary to finance construction before the actual project was underway or completely and exhaustively planned. A twenty-eight page document sufficiently identified the project and an evidentiary hearing was not required to establish the legality of adopted debt service schedules.

In Georgia, an approved bond issue was contested on the grounds that it violated a Voting Rights enactment. Plaintiff charged that combining school improvement proposals into one question prevented individuals in the black community from casting effective votes. The district court held that combining proposals for improvement as one proposition was allowed by statute and that there was no violation of Voting Rights enactments.[83]

A bond and an *ad valorem* tax proposition were opposed by Louisiana citizens who argued that the proposed construction was based on sinister motives and malicious racist intentions to economically exploit black people. The suit was dismissed with prejudice.[84]

A tax increment passed to fund a water supply system in the Walled Lake Consolidated School District was at issue in Michigan. The district claimed that the tax increment financing plan deprived them of tax revenues needed for schools. The case was dismissed with prejudice.[85]

Interest rates for bonds were litigated in Illinois when taxpayers filed suit against the Allendale Board of Education.[86] The case was dismissed and later reversed and remanded with instructions that the rate had to conform to the specific interest rate ceiling set forth in enabling legislation.

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81. Property Owners v. Commonwealth, 552 A.2d 769 (Pa. Commw. Ct. 1989).
82. Bethel Park Citizens for Better Educ. Less Taxes v. Commonwealth, 563 A.2d 969 (Pa. Commw. Ct. 1989).
83. Lucas v. Townsend, 714 F. Supp. 525 (M.D. Ga. 1989).
84. Frank v. St. Landry Parish School Bd., 540 So. 2d 1200 (La. Ct. App. 1989).
85. Walled Lake Consol. School Dist. v. Charter Township of Commerce, 437 N.W.2d 16 (Mich. Ct. App. 1989).
86. Bates v. Board of Educ., 538 N.E.2d 1299 (Ill. App. Ct. 1989).

Delinquent School Taxes

School districts in Louisiana, Texas, and Pennsylvania were litigants in delinquent tax cases during this reporting period. St. Landry Parish School Board attempted to collect delinquent sales, use, and occupational license taxes from the new owner of a retail tire store in Louisiana. The school district had been awarded judgment for delinquent taxes before it was sold. The new owners of the store had a Hold Harmless Agreement from the prior owners of the business. A court of appeals affirmed that the corporate taxpayer was not liable as successor to the previous operators of the retail store for delinquent taxes.[87]

In Texas, Huffman Independent School District sought delinquent *ad valorem* taxes on foreclosed property held by the First National Bank of Bellaire.[88] The defendant argued that collection required that notice of the appraised value of the land must be given to the property owner and the bank had not received such notice. The school district was granted summary judgment and a court of appeals affirmed that the bank was not the property owner.

A second case in Texas denied a refund of penalties, interest, and collection fees to a taxpayer who claimed that his taxes were delinquent because the district mailed the tax notice to an incorrect address.[89] A third case concerned a taxpayer appeal of the valuation of property.[90] The court held that the property valuation had not been resolved administratively, reversed the judgment for the school district, and remanded the case.

A complicated case originating with the Freer Independent School District bringing suit to collect delinquent taxes in 1987 was continued during this term.[91] In earlier litigation, the case was remanded to trial court with instructions to collect evidence which would enable the court to legally describe each parcel of property upon which the plaintiff, Manges, owed taxes.

Following the itemization of delinquent taxes, taxpayers appealed again, and the court of appeals affirmed the decision and rendered judgment on the parcels of land about which descriptions were not an issue. When taxing officials sought to foreclose, the taxpayer

87. St. Landry Parish School Bd. v. Acadiana Tire Shop, Inc., 535 So. 2d 1283 (La. Ct. App. 1988).

88. First Nat'l Bank of Bellaire v. Huffman Indep. School Dist., 770 S.W.2d 571 (Tex. Ct. App. 1989).

89. Sheldon v. Jasper Indep. School Dist., 768 S.W.2d 884 (Tex. Ct. App. 1989).

90. Valero Transmission Co. v San Marcos Consol. Indep. School Dist., 770 S.W.2d 648 (Tex. Ct. App. 1989).

91. Manges v. Freer Indep. School Dist., 728 S.W.2d 842 (Tex. Ct. App. 1987).

sought and was granted an interlocutory injunction. On appeal, the judgment was final and the injunction was vacated.[92]

In 1987, a commonwealth court in Pennsylvania had remanded a case for an accounting of tax monies owed Moon Area School District for delinquent parking taxes.[93] On appeal, the Supreme Court of Pennsylvania reversed and remanded the case, asserting that the school district had no authority to impose a duty on the county to collect a parking tax and that the managing operator was a servant of the county, not an independent contractor.[94]

92. Freer Indep. School Dist. v. Manges, 775 S.W.2d 774 (Tex Ct. App. 1989).
93. Moon Area School Dist. v. Garzony, 529 A.2d 540 (Pa. Commw. Ct. 1987).
94. Moon Area School Dist. v. Garzony, 560 A.2d 1361 (Pa. 1989).